Clinton (H. L.)

DEFENCE OF INSANITY,

IN CRIMINAL CASES.

ARGUMENT

OF

HENRY L. CLINTON,

DELIVERED APRIL 15TH, 1873.

Before the Judiciary Committee of the Senate,

In favor of the Bill drafted by him in relation to the Defence of Insanity in Criminal Cases, which has passed the Assembly and is known as Assembly Bill, No.

64567

MR. CHAIRMAN AND GENTLEMEN OF THE COMMITTEE: The bill under consideration is of the highest importance to all parts of the State, but especially to the city of New York. The importance of this bill cannot be overestimated. Something must be done to stay the fearful increase of capital crimes. I will not attempt to conceal the deep and absorbing interest I feel in the prosperity of the city in which I have spent most of my life; a city which I have seen increase from a population of three hundred thousand to over a million.

A bill like the one under discussion, which so directly concerns the safety and protection, not only of the million of people in the city of New York, but of the four millions and upwards throughout the State, certainly deserves the most serious and careful attention.

There is, perhaps, no city in the civilized world where the administration of justice in capital cases contributes so little to the safety and protection of the community, as in the city of New York. The number of murders annually perpetrated in

that city is startling. The number of trials is not large. The number of convictions, compared with the murders committed, is very small. Those who suffer the penalty recorded upon the statute book are few indeed. Reynolds, a poor, imbruted wretch, destitute alike of money and friends, a pitiable object of humanity, a physical wreck, with mind in ruins, having scarce intellect enough left to comprehend what was meant by the process of hanging, was launched into eternity by the public executioner. Without motive, he slew an estimable citizen —an entire stranger—whom he had never seen until within a few moments of the fatal tragedy. Although since his execution, murders by the hundred have been perpetrated, (with the exception of the case of Foster), in that city, the penalty prescribed by law has not been enforced in a single instance. This state of affairs could not exist, unless there was something radically wrong in the law, or in the administration of it, or in both.

There are inherent defects in the law with reference to capital cases. Upon the perpetration of a murder, the trial of the offender should proceed without unreasonable delay. In the event of conviction, if there be an appeal, the case should go direct to the Court of Appeals, and a final decision should be obtained within a couple of months of the time of sentence. If the conviction were affirmed, and the law enforced, it would operate as a terrible example to deter others from the commission of like offences. The great object of the law in punishing crime is to deter others, and thereby protect society. An example, in order to exercise a deterring and salutary effect, must be prompt.

The administration of law in murder cases should not only be prompt, but reasonably certain. Certainty is more important for the protection of the community than undue severity of punishment. In those cases where, nine times out of ten, juries from conscientious and humane motives, will not convict of murder in the first degree, where the punishment is death, the law should be changed so as to permit them, if the evidence warrants, to find a verdict of murder in the second

degree; and that offence should be punished by imprisonment in a State Prison for life.

If juries acquit persons charged with murder on the ground of insanity, such insanity should be presumed to continue, and those so acquitted should be confined in an insane asylum long enough to protect society from the recurrence of such violence.

Some months ago, I drafted bills to remedy these evils. These bills have all passed the Assembly, and are now pending in the Senate. But for the engrossing subject of the New York charter, I presume all of them would have been acted upon much earlier in the session.

The proper administration of the law in criminal cases is of far more importance in that city than the charter. Municipal reform, important as it is, (and no one has labored longer or with greater zeal and determination to accomplish it than myself), will effect but little, unless there is a reform in the administration of justice in criminal cases.

The defence of insanity, in capital cases, has been so often used of late years to shield the guilty from conviction and punishment, that the administration of justice has been brought into contempt. The views of many physicians who figure as witnesses for the defence, in these cases, are so broad and comprehensive, that people are beginning to be alarmed lest there be not sane persons enough left to try the criminals. According to the views enunciated on the witness stand, by some physicians, and credited by not a few juries, there are not many sane persons. Strange as it may seem, the modern tendency is in favor of the idea that the commission of crime —especially capital crime—is proof of insanity. Some physicians openly avow this doctrine.

On a recent trial for murder, one of the physicians, who testified in favor of the defence of insanity, proclaimed on the witness stand his belief in this doctrine.

The bill under consideration in relation to the defence of insanity in criminal cases, provides that if the jury acquit in capital cases on the ground of insanity, they shall so state in their verdict, and that the person so acquitted "shall be con- "fined in one of the State Lunatic Asylums, or in the State

" Lunatic Asylum for insane criminals at Auburn, for a period " of not less than fifteen nor more than thirty years, and until " it shall be proved in the manner provided by law that the " defendant has been restored to sanity. The said defendant " shall be confined in such lunatic asylum accordingly, and " shall not be discharged or set at liberty before the expiration " of the period mentioned in said order, except as hereinafter " provided." In order to avoid any injustice in individual cases, under the operation of this bill, if it should become a law, the third section gives the Governor power to discharge any person confined in any lunatic asylum under this act, " if, in his opinion, justice shall require it."

It has been contended by some that the provisions of this bill are harsh and severe. I do not so regard them. Some think that the term of confinement in a lunatic asylum is too long; that under the operation of such a law persons might be deprived of their liberty long after they had become sane. I will endeavor to show that such would not be the effect of the proposed law; that no injustice would be done in cases of actual insanity. I propose to show that, in those cases, in respect to which it is claimed the proposed law would operate harshly, there is no insanity whatever which the law recognizes. If, however, a person escape the consequences of a capital crime, and obtain an acquittal on the ground of insanity, he ought to accept the consequences of the verdict. If he establish the fact by the verdict of a jury, such a decision should be binding upon him. If he be so insane as to kill people, he is too insane to be at large. The community clearly have a right to be protected against the violence of insane persons. An undoubted right on the part of the Legislature exists to pass whatever laws are necessary to secure this result. The law, as it now exists, secures the right of protection against disorderly persons. Upon conviction of disorderly conduct (which is a misdemeanor) one may be imprisoned in the penitentiary. If it be right that the law, in order to protect the community, should imprison for months persons guilty of disorderly conduct—not amounting to so much as assault and battery—it is certainly right to place in confinement those whose violence results in the taking of human

life. The community have an inherent right of protection against violence in respect to person and property. As the law now stands, one on a trial for murder may be acquitted upon the ground of insanity, and be immediately let loose upon the community to repeat his outbursts of murderous violence as often as he pleases, in fact, so far as the administration of the law is concerned, he is furnished with every encouragement to pursue this course. The public safety imperatively demands that the law in this respect be changed.

Some maintain that persons are afflicted with insanity just long enough to commit murder; that as soon as the deed is done, their sanity is restored. I do not propose to discuss the question whether such a case is possible. Still, having had, in the conduct of capital cases, an experience as large as that of any lawyer in the city or State of New York, I venture the opinion that medical jurisprudence does not furnish a single well-authenticated case where the commission of murder has had such a healthy effect upon an insane person as to restore him instantly to a condition of sanity. The treatment of insane persons has improved wonderfully of late years. I hope the perpetration of murder is not to continue as one of the "modern improvements" in the treatment of the insane.

In the great majority of cases, where persons while laboring under insanity, commit murder, the insanity continues for many years, if not for life. In most of the other cases where juries acquit on this ground, in a legal point of view, no insanity exists. There may be a mental disturbance which physicians, who have become almost monomaniacal on the subject, dignify with the name of insanity. In such cases, while there may be eccentricity and strange and unreasonable conduct, there is no such insanity which, according to the well-settled principles of law, exempts from responsibility for criminal acts. This I am prepared to show by the best medical authorities, by the most approved works on medical jurisprudence, and by the decisions of the highest legal tribunals. The effect of my bill would be to encourage the defence of insanity where it actually exists, to throw around the really insane the protection of the law, to treat them tenderly, kindly, humanely. The effect

would also be to discourage the interposition of this defence where it was sham and spurious. Such a law as I propose would have a powerful effect in deterring from the commission of capital crimes. Many a murder is now committed upon a cold-blooded calculation of the chances in favor of escaping the just consequences, through the convenient and elastic defence of insanity. Those who are so ready to yield to temptation, to give loose rein to their passions, to satiate their revenge, and with murderous intent imbrue their hands in the blood of their fellows, would abstain could they look forward to the certainty of imprisonment for life in a State Prison, or an ignominious death upon the scaffold on the one hand; or on the other confinement in a lunatic asylum from fifteen to thirty years, if by the aid of medical enthusiasts, one-ideaed physicians, adroit counsel, and timid and weak jurors, a verdict of insanity was obtained. This class of persons would have so much method in their madness, that they would abstain from crime.

No general law can be enacted which will fit harmoniously every case that may arise. A law should be so drawn that generally—that in the great majority of cases—it will operate justly. All criminal statutes may, in individual cases, operate harshly. It was for this reason that the pardoning power was given to the governor. If, under the law I propose, any case of hardship occurs, the governor can afford ample and timely relief. The great object of my proposed law is to secure protection to law-abiding citizens—to society—to the community at large. While accomplishing this, it will do no injustice to those who are really afflicted with insanity.

Every civilized government seeks to punish crime, not so much because the guilty deserve punishment as because it is necessary for the protection of the innocent. The law does not wantonly nor unnecessarily inflict pain and suffering upon the perpetrators of criminal offences; the law is kind, humane, and merciful, even to the guilty, as far, but no farther, than is consistent with the rights of unoffending citizens. If all were honest and pure, if none would give way to evil passions, there would be little need for the restraint of law. It is because of the prevalence of dishonesty, impurity, and crime that courts

are organized. It is the duty of all to maintain a proper restraint upon their passions, to control their evil propensities, and not yield to temptations which result in crime, and especially the highest crime known to the law.

If a man, not accustomed to control his temper or "put the brakes upon his passions," who, by dissipation and vice, has undermined his constitution and disordered his nervous system, gives way, for example, to an idle and groundless suspicion that his wife, long the victim of his brutality, may possibly have passed the bounds of prudence, and, with stealthy, cold-blooded cowardice, assassinates her, or whoever may have befriended her; that certainly furnishes no reason in law or in morals for suddenly investing him with public sympathy, raining down tears of commiseration upon him, and lifting him from a lifelong obscurity to the pinnacle of fame—surely such an act does not entitle him to be crowned as a hero. Yet such a spectacle—disgraceful to the administration of justice—has been too often witnessed in this country. To such uses has this defence of insanity been too frequently applied. If distinguished precedents of this kind, which have been furnished within the last few years, are practically to become the law of the land, then it would be as well to abolish all law for the punishment of crime, and let every man rely on his own right arm and his innate sense of right for protection.

In almost every case where insanity is set up as a mere pretext, a mere excuse, to blunt the edge of conscience with juries, and enable them to render a verdict of acquittal against evidence, against law, and in violation of their sworn duty, doctors are found as witnesses, with convenient elastic opinions, in favor of the insanity of the accused; and that, too, when nothing can be found in the whole history of the prisoner, tortured and perverted as it often is by over-zealous friends and able counsel, half so irrational or insane as this very medical evidence, if we are to judge it by the rules which these physicians furnish us upon the witness stand. If the evidence of these medical experts be correct, if the doctrines advocated in the writings of many of them, who, in their own opinion, constitute the pioneers—the advance guard—of medical science, be

true, then the whole world is insane, and most insane of all are these doctors themselves.

According to them, the indulgence of wild and furious passions is the excitement of mania. With them, malignity—a bad heart—is lunacy; brutality is madness. Crime shows a deprivation of reason. Instead of imputing crime to the wicked nature of the individual perpetrating it, they speak as though it were "a visitation of God." Vice they would have us believe is not vice, but mental derangement. The formation of opinions by criminals upon insufficient evidence, or perhaps on no evidence but their whims or caprices, or their own impure thoughts and evil propensities, these doctors call "delusion," and delusion, with them, is strong proof of insanity. If to entertain the belief that a wife is guilty of adultery when she is innocent, if to believe another guilty of wrong, when such is not the fact; if to misconstrue circumstances; if to reason illogically; if to draw wrong conclusion from certain premises; if to form such an opinion, or any opinion, upon insufficient evidence, or upon no evidence, be "delusion" in the medical sense, and proof of insanity, then are these doctors entitled to our deepest commiseration, our tenderest sympathy, for their reasoning is illogical, they form their opinion upon insufficient evidence, and, upon their own doctrine, they are victims of "delusion," aye, a delusion which has wrought infinite mischief to society.

Assuming, as I do, that they are frank and honest, and that they think they speak the voice of science, I can only say, if in opposition to good judgment and common sense, by their own wild theories

> "They will be cheated to the last,
> Delusion strong as hell shall bind them fast."

Some of these physicians who have adopted insanity as a hobby, who have so long brooded over one idea that they have become enthusiasts, not to say fanatics on this subject, mistake accentricity for insanity. If a man exhibit eccentricity of character, if he possess peculiarities of disposition—they may be ridiculous, absurd, in bad taste, offensive or disgusting to those

around them, and yet otherwise evinces no disturbance of the intellect, conducts his business with fair intelligence, he is sane; but if he commit a crime, and especially the crime of murder, these eccentricities prove him insane. In other words, he is sane up to the very moment of perpetrating the crime, then he becomes insane, and the insanity passes off as soon as the crime is over.

Although some physicians and medical writers have surrendered their judgment to wild theory, and bidden farewell to their common sense, and thereby accommodated themselves to the varying exigencies of the defense of murderers, yet the law upon the subject of insanity is clear and unmistakable. These extreme views and absurd theories of medical enthusiasts are not countenanced in law. The law on this subject is founded upon intelligence, upon common sense, upon the experience of mankind.

Insanity is total or partial. This division any one of ordinary intelligence can understand. But some medical writers—favorites with the physicians who so often appear as witnesses to prove insanity in murder cases—have made an endless classification of the different kinds of insanity. They have given a classification as extensive as the whole catalogue of crimes.

Elwell, one of the very best writers on medical jurisprudence, in his work on *Medical Evidence*, page 353, says:

> The extent and minuteness to which these classifications are carried tend only to embarrass the courts. With them the question is not as to what order, class or division does the malady belong, but it is as to the responsibility of the party. Is he insane? * * * * The important part is whether the party is responsible for his acts.

In alluding to the authors of another work on medical jurisprudence, who adopted such an endless classification, saying, "it is very valuable both for the delicate precision of its analysis and for the important aid it affords to the nomenclature of forensic psychology," this author says:

> This may all be true, but it is so delicate we fail to perceive any advantage that can be derived from such a classification. It is certainly liberal enough to encompass within its folds every son and daughter of Adam, sane or insane.

This is the precise extent to which these physicians would extend the subject of insanity. According to them, you could show that every one had a "delusion," and that most people had many "delusions;" but, fortunately for the safety of the community, juries generally will not labor under the "delusion" of believing that it is their duty to agree with these doctors. Neither do courts agree with them, and they know it. Foremost among the writers who have carried the doctrine of insanity to ridiculous and absurd lengths is Dr. Ray. *Ray on Insanity* is always quoted where the defence of insanity is set up in cases of murder. Authors like Dr. Ray do not write with accuracy and legal precision.

In Elwell's *Medical Evidence*, pages 359 and 360, he says:

> Dr. Ray, by whose own writings we have shown the want of definite knowledge upon the question of insanity, commences his book with a criticism upon the courts, as severe as it is unreasonable; and, from the assurance and confidence with which he starts out, we naturally expect that, before he closes his labors, he will set the courts right, by defining the boundaries of insanity accurately, and point out *its indices* so clearly that they may not err in future. This, however, he does not do. When he comes to the troublesome points—those upon which rest all the dispute and doubt—he deals in generalities, leaving the matter really where he found it, *a terra incognita.*

Dr. Gilman belonged to the same school as Dr. Ray. Dr. Gilman testified in the Huntington case that the prisoner was insane, although he knew right from wrong with reference to the act for which he was on trial. The Court charged the jury, in substance, that Dr. Gilman proved a state of mind which the law called sanity instead of insanity, and the prisoner was convicted. Dr. Gilman's definition of insanity is this:

> Insanity is a disease of the brain by which the freedom of the will is impaired.

The exhibition of certain peculiarities on the part of a prisoner, such as yielding to temptation, acting contrary to his own interest, giving way to jealousy without sufficient cause, or without any cause, committing crime without adequate motive, or without any apparent motive—all these are considered evidence of insanity, and the existence of insanity is proof of disease of the brain. According to this modern doctrine, whoever

perpetrates crime, or violates the principles of morality, is insane. Such is the logical and inevitable deduction from their premises, although all these physicians and medical writers will not admit it. If one has dyspepsia, or rheumatism, or gout, and from any of these causes, or from indulgence in dissipation and vicious habits, finds it difficult, or as it seems to him impracticable, to control his temper, and in this way "the freedom of the will is impaired," such a person is insane; for the fact that "the freedom of the will is impaired" from any of these causes is proof conclusive of a disease of the brain, called insanity. Such a doctrine, sustained as it is by great learning and eminent ability on the part of these modern medical enthusiasts, practically absolves everybody from criminal and moral responsibility. Such a doctrine is monstrous, and fraught with the most terrible evils to society. The enunciation of such a doctrine by distinguished medical men upon the witness-stand, or in treatises on medical jurisprudence, is infinitely more disastrous to the well-being of society than the perpetration of a murder, because the commission of such a crime so shocks the moral sense of the community that a conviction and swift punishment of the murderer is demanded, in order to deter others from the commission of a like offense; but such a doctrine offers a premium upon crime; it stimulates and invites the evilly-disposed, the wicked, the malicious, and the brutal, to the perpetration of murder, by promising them protection and exemption from punishment.

In this connection I will call attention to an extract from that high authority—*Elwell's Medical Evidence*, pages 412–413. The author says:

"The alternative is most generally with the individual himself—whether a strong desire or tendency to do a particular act shall be controlled and kept under until it disappears or subsides altogether, or whether it shall be indulged in until its influence has increased and become irresistible. Insufficiency of intellectual force is a convenient plea for the gratification of proscribed and dangerous indulgences, or passionate revenges, but it would be both puerile and dangerous to admit it in courts of justice. That man who has attained mature life, without having ever put the brakes upon his passions, will find it no light work to check them then. Every year it requires more resolution to summon the necessary force, until that which at first had been

easy becomes almost an impossibility, and the moral, intelligent youth grows into a passionate animal, driven by the whirlwind of his instincts, his appetite and passions unbridled and intensified. Without disease of brain, except what he has himself produced by criminal neglect of the proper use of reason, he is the slave of self-indulgence and cherished sins. The child permitted to run wild and have the full gratification of his wishes for a few years, when finally checked up rebels against it, and will not be restrained except by a superior force, or fear; so it is with the brain or mind unaccustomed to the steady restraint of a tender, healthy conscience and enlightened intellectual force; when the latter attempts to assert its way, it is in a measure powerless.

"Many insane criminals are educated and formed, by their own negligence in this way. Should they not be held to a strict accountability? To say such a one is insane, and therefore not subject to punishment, is to utter a dangerous folly, and to encourage unchecked passions and fatalisms.

On this subject the author, at pages 404 and 405, adopts the following language of Sir Benjamin Brodie:

"It is true, that difference in the character of individuals may frequently be traced to a difference in their organization, and to different conditions as to bodily health; and that, therefore, one person has more, and the other less difficulty in controlling his temper and regulating his conduct. But we have all our duties to perform, and one of the most important of these is, that we should strive against whatever evil tendency there may be in us arising out of our physical condition.

I have pointed out some of the erroneous doctrines prevalent among certain physicians, and which, by the aid of over-timid juries, have too often in capital cases operated to defeat the ends of justice. I have endeavored to show that the law I propose is necessary for the safety and protection of the community, and that it would not operate unjustly upon persons acquitted on trials for murder on the ground of insanity. As a general rule, in those cases where juries acquit on this ground, and it is clear that as soon as the offence is committed (or at all events directly after the trial) the accused is sane, no insanity in point of law ever existed. If, however, I am wrong on this subject, and insanity really exists in this class of cases, and justice should require that persons confined under the proposed law should be discharged, they could at any time be set at liberty by the governor, after he had afforded the district-attorney of the county

where the conviction had taken place an opportunity of being heard.

Some think there is danger that the governor would lend a too willing ear to such applications. I entertain no such apprehension. Of course I assume, that upon any such application the Governor would do his duty, and decide fairly and honestly. It is true Governors may prove recreant to their duty; so may judges and officials of any and every kind, but we cannot on this account refuse to confer on them power. The Governor has power to pardon every one convicted of murder or any other offence. He can open the doors of all the State prisons and set at liberty every convicted criminal in the State. This power has always been lodged in the governor by the constitution. Applications for pardon are made by the thousand to every governor, and yet very few are granted.

The main objection urged against my bill is that it would confine for too long a period persons acquitted on the ground of insanity, who had committed homicide, while laboring under the influence of temporary or emotional insanity. My answer to this objection is: 1st. That if such cases actually arise and justice requires that persons so confined be set at liberty, the governor is vested with power to give ample relief. 2d. In these cases—in the great majority of them at all events—there is no insanity at all which the law recognizes; the insanity invoked is a modern invention to excuse crime—to shield the guilty from punishment.

A legal anecdote will illustrate this kind of insanity. Many years ago, a woman in the city of New York, who had—or claimed to have—been wronged by a man at that time well known in the community, met him upon the steps of the Astor House. She attempted to plunge a dagger to his heart. Although she failed to kill, she wounded him seriously. She was indicted for an assault with intent to kill, and tried at the court of sessions. One of the ablest and most distinguished criminal lawyers that ever graced the bar of the city or State of New York—the late David Graham—defended her. By his powerful advocacy, his unrivalled skill, his matchless eloquence, the jury were induced to acquit on the ground of insanity. The

verdict was greeted with thunders of applause that seemed to shake the very building. Soon after, a dinner was given to the court, the counsel and the jury. On that occasion, after the wine had begun to flow somewhat freely, and counsel and court had been abundantly toasted, the Recorder (who had presided at the trial) slowly and calmly arose. His countenance wore an expression of dignity, peculiar and unusually impressive. Those present gazed with fixed attention upon his commanding and portly figure, as with judicial gravity and majestic mien, he, looking at the foreman, announced that he was about to propose a toast, which he was sure would meet with the most cordial approbation of all present. He said, "I propose the health of Mr. ———, the foreman of the jury, who so nobly did his duty, *notwithstanding his oath.*"

In order to appreciate the importance of the passage of my bill, the subject of insanity should be understood, especially in its bearings on the criminal law.

I propose to show that in those cases, respecting which it is claimed that the bill would operate harshly, there is no insanity whatever which the law recognizes.

In some cases it is claimed that where one broods over a single idea—cultivates a feeling of jealously, or it may be revenge, on account of a real or fancied injury—until this single idea obtains complete mastery over him, he is to be excused from responsibility, because he is hurried on to the commission of crime by an irresistible impulse. Under such circumstances, the law does not hold a person irresponsible for his acts. The object of criminal law is to compel persons to restrain their passions. The law on this subject is well and forcibly expressed in "Barlow on man's power over himself," cited with approbation in Elwell's Medical Ev. p. 414.

"A man accustomed to self-control becomes occupied with one thought; his ambition has been disappointed perhaps, or a lawsuit has perplexed him, or he has been much employed in some engrossing pursuit, until unable to regulate his thoughts at will, he finds the one which circumstances have made habitual recur uncalled for. An effort would probably dismiss it, for every one who has studied much, knows that he has had to dismiss many an intruding thought, and with some effort too, if he wished to make progress in what he has undertaken;

but this individual has never been accustomed to make any such effort, and he knows not how to free himself from the subject which thus haunts him. If it is an unpleasant one he is wearied and worn by it; but every day that it is not driven off it assumes a greater power, for the part of the brain thus brought into action is now by habit rendered more unfit for use than any other; he has not resolution enough to free himself from his tormentor by a determined application to something else which would require all his attention; he sits brooding over it, and when life has thus become irksome, he strives to terminate his discomfort by suicide; yet here is no structural disease."

Without "structural disease," or in other words, "disease of the brain," there is no insanity. This author, at pages 405 and 406 quotes the language of the eminent Sir Benjamin Brodie, who says:

"It has been observed by a physician, who has had large opportunities of experience in those matters, that a man may allow his imagination to dwell on an idea until it acquires an unhealthy ascendency over his intellect! And, surely, if under such circumstances, *he were to commit a murder, he ought to be held a murderer, and would have no more claim to be excused than a man who voluntarily associated himself with thieves and murderers, until he has lost all sense of right and wrong; and much less than one who has had the misfortune of being born and bred among such malefactors.*"

It is the duty of all to control themselves to restrain whatever there may be of evil, or tendency to evil in their nature. The whole object of criminal or civil, statute or common law, is to restrain the commission of evil—the perpetration of wrong—by visiting the evil and wrongdoer with punishment, resulting to him in the loss of property, or liberty, or life itself.

There is no species of crime known to the law, which does not take refuge under the sheltering wings of modern insanity. The learned author (Elwell), I have so often quoted, in speaking of prominent cases in criminal jurisprudence, says at pages 420 and 421:

"In the Huntington case, a wild, reckless, and criminal spirit of speculation was urged as one form of insanity, and should be a defence and turn aside the edge of the law; while in the Sickles' case, the same able lawyer labored with great skill to show that 'jealousy is the rage of man,' that it converts him into a frenzy, in which he is wholly irresponsible for what he may do."

"In the latter case it is to be remarked, and to the honor of the medical profession, that the defence received no aid from distinguished medical men."

"Medical witnesses should weigh well the effect of their evidence on the question of insanity, when it is of a speculative character. They should remember that it may be in the hands of able criminal lawyers, a powerful agency for shielding crime, through the intervention of a humane and kind-hearted jury. If the defence in the cases of Huntington and Sickles had succeeded—and we do not know how far this element in the defence of Sickles influenced the jury that acquitted him—then would we have the propositions established, that a long course of vice and reckless speculation, based upon forgery, and that sudden violent passion, resulting in homicide, are each evidences of insanity, and a legitimate defence for the accused, thus *overturning the very foundations of civil and religious society.*"

In order to show that I have not misrepresented this monstrous doctrine of modern insanity and its terrible consequences, I will again cite this very high authority. Elwell, pages 406, 407, 408, and 410.

"Dr. D. M. Reese, who has discussed this question in an able report to the American Medical Association, upon the subject, says: "But we now proceed to inquire, 'wherein does such moral *insanity* differ from moral *depravity*, as defined by our standards? I find a law in my members warring against the law in my mind. When I would do good, evil is present with me.' 'He that knoweth to do good and doeth it not, to him it is sin.' 'He that knoweth his Master's will, and doeth it not, he shall be beaten with many stripes.' 'As a man thinketh, so is he.' '*Vide meliora probaque deteriorara sequor.*' 'I see the good and yet the ill pursue.' Here we see by Christian and heathen authorities, that such 'moral insanity' is a synonym of 'moral depravity,' and *that responsibility and punishability are not to be shunned or evaded by this plea.*" * * *
"The writers who have successively urged this plea of 'moral insanity' in behalf of criminals of every grade, maintain the doctrine that the instances of 'moral depravity,' and especially the examples of the most hideous crimes, all are so many evidences that 'moral insanity' exists, and that the parties are thus depraved, because of this malady. The greater the criminal say they, the more reason exists for interposing this plea, for no man in his senses would or could perpetrate such deeds of blood, 'as make the cheek of darkness pale.' *Hence the practical effects of their creed are avowed to be sought in the abolition of the gallows, and the conversion of our prisons and penitentiaries into hospitals*, where the perpetrators of capital crimes should be treated as patients and not as criminals." * * *
"The mooted questions of natural ability and moral inability, coexisting in the same mind, are urged as exhibiting a clear, intellectual perceptions of the path of duty, in those who are so imbecile in their will that their corrupt passions, strengthened by evil habits and vicious associations, overrule their intellect, and precipitate them into

vice and crime. *Such depravity may become irresistible, and yet irresponsibility can not be predicated in such cases, but the contrary, since their moral inability is self-originated.*" * * * *There being but few well balanced minds, it would be dangerous practice to hold, that because a man labored under some degree of mental delusion or error in his judgment in regard to his transactions or ideas he is not a responsible agent.*"

In regard to the doctrine of moral insanity being invoked to shield criminals from responsibility, I will cite, as containing not only sound law, but clear and vigorous common sense, the following extract from Taylor's Medical Jurisprudence. (6 Am. Ed.) At pages 682 and 683, the author says:

"There is no doubt, that the unrestricted admission of such a theory [moral insanity] would go far *to do away with all punishment for crimes, for it would render it utterly impossible to draw a line between moral insanity and moral depravity.*"

What is crime but the perversion of moral feelings?

There is no doctrine of the present day so calculated to overturn society from its very foundations, to encourage crime of every species, and especially capital crime, as this modern interpretation of the doctrine of insanity.

It is claimed that the want of motive, or of sufficient motive, on the part of persons guilty of homicide, is a strong indication or proof of insanity. The fact that a murder is committed without motive, or adequate motive, is no proof of insanity. If the absence of motive were proof of insanity, it would not be murder, as it is under our statute, for a person wantonly to fire into a crowd, and kill one or more persons. This is murder, although there exists no intent to kill any one in particular, and there be no motive for the act. The law describes such a proceeding as "an act imminently dangerous to others, and evincing a depraved mind."

Of course the absence of motive is an important circumstance to be taken into consideration, for the purpose of characterizing the act. It may tend in the direction of insanity, or it may show a depraved and wicked mind fatally bent on mischief.

In the case of Mosher (4 Barr, 266), Chief Justice Gibson,

in charging the jury, the prisoner being on trial for murder, said:

"It is urged that the want of motive is evidence of insanity," * * * * "but a motive need not always be shown,—it may be secret; and to hold every one mad whose acts cannot be accounted for on the ordinary principles of cause and effect, would give a general license. The law itself implies malice where the homicide is accompanied with such circumstances as are the ordinary symptoms of a wicked, depraved, and malignant spirit,—a heart regardless of social duty and deliberately bent on mischief."

In that class of cases where temporary or emotional insanity is set up as a defence, eccentricities are invoked as proof of the existence of insanity. Eccentricities may be, and often are, carried to the most absurd and ridiculous lengths, without furnishing the slightest evidence of insanity. Upon this point I might give illustrations *ad infinitum*. I will cite but few. Knaggs, in his work on unsoundness of mind, says:

"There was an old man, well known in London during the last century, who was of an ungainly appearance, and subject to occasional attacks of hereditary melancholy. So inconsistent was he in his habits that sometimes he practiced great abstemiousness, and at other times devoured large meals with brutish slovenliness and voracity. Sometimes he would persist in drinking nothing but water, but occasionally drank wine by tumblers full. His income was far from large, and not of a certain amount, yet he kept a set of old men and women about his house, whose bickerings and disagreements now and then drove him out of doors. He was in general very loquacious, but has been known to sit in company and drink a dozen cups of tea, without speaking a syllable. When not engaged in discoursing, it was his custom to keep muttering to himself. In walking he performed strange gesticulations, and would not go in at a door unless he could effect his entry in a certain preconceived number of steps, and so as to introduce himself on a particular foot,—turning back and recommencing until he succeeded as he desired. There was a row of posts near his house which he would not pass without touching singly, and if he omitted one in the series, he retraced his steps to remedy the neglect. He hoarded up orange skins for some mysterious purpose he would never divulge. He suffered remorse of conscience for having taken milk on Good Friday. He believed in ghosts, and went ghost hunting in Cock Lane, and maintained that he heard his mother calling for him by name in the world! Was not this man insane? So far from it, Dr. Johnson was, by consent, regarded one of the most vigorous thinkers of his time, and to-day he is called one of the greatest sages and ablest writers that ever lived."

The law requires a much greater degree of insanity to exempt one from criminal responsibility, than to render void a will or any instrument conveying property. I will call attention to a few cases in which insanity was sought to be established by proving eccentricities.

In 1 Redfield on Wills, pages 82–83 (2d ed.), the author says:

"A most remarkable case is that of Morgan v. Boys, where the will was upheld on the ground that there was no satisfactory proof of actual unsoundness of mind. The testator devised his property to a stranger, thus wholly disinheriting the heir, or next of kin, and directed that his executors should 'cause some parts of his bowels to be converted into fiddlestrings, that others should be sublimed into smelling salts, and that the remainder of his body should be vitrified into lenses for optical purposes! In a letter attached to the will the testator said:

"'The world may think this to be done in a spirit of singularity or whim, but I have a mortal aversion to funeral pomp, and I wish my body to be converted into purposes useful to mankind.' The testator was shown to have conducted his affairs with great shrewdness and ability; that so far from being imbecile, he had always been regarded by his associates through life as a person of indisputable capacity. Sir Herbert Jenner Faust regarded the proof as not sufficient to establish insanity, it amounting to nothing more than *eccentricity*, in his judgment."

In Tennessee it was held—

"That a person who believed, in reference to a future state of existence, that there were degrees of happiness there, and that in whatever *circle a man lived on earth, he would move in the same sphere in the future life, and that his preeminence there depended materially upon the amount of property he acquired here*, and the charitable purposes to which he might have appropriated it, might make his will, and such opinions were no evidence of insanity."—(Gass v. Gass, 3 Humph. 278.)

In the case of Thompson v. Thompson, decided at the general term of the Supreme Court, First District, and reported 21 Barb. 107, it was held that—

"Erroneous, foolish, and even absurd opinions on certain subjects, do not show insanity, when the person entertaining them still continues in the possession of his faculties, discreetly conducting not only his own affairs, but the business of others."

Thompson's eccentricities were of the most remarkable character. I will only allude to a few of them. He told one of the witnesses he knew the place where Kidd's money was buried; he said he had a rod to attract the money; he got an old man to act as rod man, who did not succeed. He got another man, named Mulford, to act as rodsman. The rod in Mulford's hands attracted the money, because he had *more of the water of life in him than the old man, because he drank more rum.* Thompson said Mulford found the place where the money was. "Just as he broke the turf there was a great black and white spotted bull came running over the hill, throwing his tail as if he had the wattles in his back in the spring of the year. The bull pawed and hooked the dirt as if he was mad. There was nearly a thousand cattle, he said, that came and passed diagonally over another hill opposite, which acted just like that bull. *He said the bull looked to him as big as a mountain.*"

One of the witnesses testified as follows:

"He [Thompson] told me to go to the stable and get a wrench to take his plate off the door. I came in the back way through the basement, up the back stairs into the hall, and met him about half way, and he took the wrench out of my hands to unscrew the plate. I turned and had just got down the stairs a bit when I heard him screech out as if somebody had hurt him. I ran to his assistance, and he was lying partly on the floor, the wrench in one hand and holding himself up with the other. He said when he began to unscrew the plate *some very strong thing hugged him; it must have been a ghost; it gave him a squeeze like a bear.* I took him down, led him to the William street house, and he said the Beekman street house was haunted, and he would never go into it again for all New York."

Thompson, on a great many occasions, told one of the witnesses that it was important to obtain the philosopher's stone; he stated to the witness that he must line a room with Irish linen, get a man in there, *keep him drunk six months on strong beer or London porter, which was better; at the* end of six months he could obtain from that man the water of life, and he could complete the philosopher's stone, and with that he could know what every person was about, in the earth, under the earth, and in heaven.

On other occasions, when talking of the philosopher's stone, Thompson said:

"He had set apart a house, and man consecrated to the work; everything about it was consecrated; the room was carpeted and lined with Irish linen. He kept wax candles for forty days and nights, they must not go out. The witness inquired why forty days? Thompson's answer was that Moses was in the mountains forty days; our Saviour fasted forty days. He said the man whom he had set apart, and consecrated to raise spirits and get the philosopher's stone, and other purposes, must not eat while the sun was up. He could only eat before sunrise and after sunset; and then must eat only unleavened bread, or Boston crackers, &c. Perfumes were kept burning in the room, and the man was dressed in white Irish linen. His object was not only to obtain the philosopher's stone, but also to call in the planetary spirits, whom he could command, and who would obey whatever he said."

"On other occasions, Thompson undertook to show one of the witnesses spirits in the moon and sky. He said they were spirits of the air; some lived in the moon, and some in the sky. He would point and say to the witness: There, don't you see them."

Notwithstanding all these eccentricities and erroneous opinions, it was held that Thompson was not insane, and was perfectly competent to make a valid will, and that his testamentary capacity was not affected in the least degree, it appearing by the evidence, that in conducting his business affairs, he exercised at least ordinary discretion, prudence and intelligence.

In hardly any of the cases, where acquitals have been had on the ground of temporary insanity, has the proof of extraordinary conduct, eccentricities, and delusions even, been so great as in the cases cited. If by reason of eccentricities and extraordinary conduct, and mental disturbance, which may be the outgrowth of bad habits, or the result of intellects not well balanced, persons are not to be held responsible for crime, society could not hold together. The law as it exists, defining where responsibility ceases, and irresponsibility begins, is correct. I have shown:

1st. That brooding over a single idea, until it obtains complete mastery over the mind,—giving way to a spirit of revenge, until one is hurried on by an apparently irresistible impulse, to the commission of deeds of violence, does not exempt

one from responsibility to the law, or furnish any excuse whatever for the perpetration of crime.

2d. An absence—an apparent absence—of motive for acts of violence committed, does not establish insanity.

3d. Eccentricities, no matter how ridiculous or extraordinary; erroneous views, however absurd or unreasonable, unaccountable fancies, do not prove insanity but are all consistent with that state of mind or mental condition which the law calls sanity.

The exact line of demarcation between sanity and insanity —between responsibility and irresponsibility—possibly may not be clear in all cases. I shall, however, endeavor to point it out.

I have endeavored to show, that if the bill under consideration shall become a law, while affording ample protection to the insane, it would conserve the public safety. I have sought to show that in most cases, where juries on capital trials have acquitted on the ground of temporary insanity, there was in fact no such insanity, as in point of law furnished any excuse for crime. In order to show the necessity of such a statute as I propose it is important, that the law on the subject of insanity should be properly understood. The law as to what constitutes insanity is correct; it is in harmony with sound reason and common sense; properly enforced it will protect the community. It is the perversion of the law which has fixed such a lasting disgrace on the administration of justice. For the due and proper administration of justice, it is indispensable that the dividing line between sanity and insanity be clearly defined. There may be cases which come right up to the boundary line on the one side or the other; still there must be a boundary line, and the law must point it out, and designate it with reasonable certainty and precision. Notwithstanding the morbid zeal of some physicians, whose writings, whose teaching on the witness stand and elsewhere, are calculated to unsettle the very foundations of government, and encourage violence and bloodshed without limit, the law on this subject is clear and precise,—involved in no doubt or obscurity what-

ever,—and admirably adapted to conserve the public peace, and afford protection to all law-abiding citizens. I shall endeavor to show the dividing line between responsibility and irresponsibility.

Before courts and juries no difficulty can ever arise in regard to cases of total insanity. If a person entirely deprived of reason, whose mind is totally deranged, who to all intents and purposes is a maniac, commits a criminal offense, he is of course exempt from criminal responsibility. To inflict upon such a person capital or other punishment would shock the public sense of justice beyond expression. The difficulty arises in the application of the well settled rules of law to the facts, in cases of *partial* insanity. In many cases persons have been impelled to the commission of criminal offences, and especially to the taking of human life, by reason of some extraordinary *delusion* in regard to existing facts. Insanity not unfrequently takes this form. For example, the victim, without any cause whatever, believes himself surrounded by enemies in league to take his life, or he believes he hears the voice of God commanding him to take the life of a certain person, and in consequence he is driven on irresistably by such an insane delusion to the commission of homicide.

Prior to 1843, there had been in England not a few acquittals on trials for murder upon the ground of this particular kind of insanity. It become very important that the law upon the subject should be clearly defined. With that view the House of Lords addressed to the fifteen judges this question, among others:

"If a person under an insane delusion as to existing facts commits an offence in consequence thereof, is he thereby excused?"

To this question the judges returned the following answer:

"The answer must, of course, depend on the nature of the delusion; but making the same assumption as we did before, namely, that he labors under such partial delusion only, and is not in other respects insane, we think he must be considered in the same situation as to responsibility as if the facts with respect to which the delusion exists were real. For example, if under the influence of his delusion he supposes another man to be in the act of attempting to take away his life, and kills that man, as he supposes, in self-defense, he would be

exempt from punishment. If his delusion was, that the deceased had inflicted a serious injury to his character and fortune, and he killed him in revenge for such supposed injury, he would be liable to punishment."

After citing the above question and answer, Wharton, in his Criminal Law (6th edition), 518, says:

"So far as the law thus stated goes—and it is stated with extreme caution—it has been recognized as authoritative in this country."

Unless the act for which a person is on trial be the direct offspring of the delusion, in no case, in no event, is he exempt from criminal responsibility, where this kind of partial insanity is interposed as a defence. Even where the act in question is the direct result of the delusion, the accused cannot escape responsibility, unless the facts, which he imagines to exist, (but which are entirely fictitious), would, if true, justify the commission of that particular act. The same principle applies to wills. If they are the direct offspring of delusion, the courts pronounce them invalid; but if the delusion, which possessed and haunted the mind of the testator, related to other subjects than those embraced in the will, they have no bearing or importance upon the question of testamentary capacity.

In reference to this doctrine of delusion, so important in cases of partial insanity, I will give some illustrations, showing the wisdom of the law on this subject. In discussing the principle I have just stated, Taylor, in his Medical Jurisprudence, 6 Am. ed., 673, says:

"In the case of *Barton*, (July, 1840), the Ecclesiastical Court was chiefly guided in its decision by the nature of the instrument. The testator, it appeared, labored under the extraordinary delusion *that he could dispose of his own property to himself, and make himself his own legatee and executor!* This he had accordingly done. The instrument was pronounced to be invalid."

In the case of Hadfield, (27 State Trials, 1281), who was tried for shooting at George the Third in Drury Lane Theatre, in the year 1800, he believed that he held intercourse with the Deity, and that he was himself destined to be a savior of mankind, like Jesus Christ; that he could only fulfil the mission by

giving up his own life; that he must not take it by his own hands, but must cause it to be taken in some other way, and for this purpose he shot at the king, knowing that the attempt to take the life of the sovereign was a capital offense. Here the act charged upon the prisoner was the direct offspring of the delusion.

Offord, who was tried before Lord Lyndhurst, one of the Barons of the Exchequer in 1831, (5 Carr. & P., 168), for the murder of one Chisnol, shot by him in a public street, labored under the delusion that he was the victim of unceasing persecution, that there were numerous conspirators against his life, that the deceased was one of those who intended to take his life, and with this belief, in order to protect his own life, he slew the deceased. He (as well as Hadfield) was acquitted.

Oxford was tried for shooting at Queen Victoria in 1839 (9 Carr. & P., 525.) He attempted to shoot the Queen while she was riding out with Prince Albert. Oxford's delusion consisted in believing that he was at the head of an armed and organized conspiracy against the government; that he was corresponding all over the country with the leaders in the armed combination called "Young England;" and believing that he and his army were actually in war, as a purely war measure, he fired at the Queen. The connection between the delusion and the act was patent to all.

In 1843, a Scotchman, named McNaughton, in the open street shot Mr. Drummond, private secretary to Sir Robert Peel. He mistook the former for the latter. The prisoner's delusion consisted in believing that he was surrounded by bitter and malignant persecutors; he took a voyage to France to get rid of them, but immediately upon his landing he saw that he was confronted with his spies; he believed Sir Robert Peel was one of those in league against him, and therefore shot him, thinking that he could thereby obtain peace. These facts were all imaginary. The prisoner was acquitted. It was in consequence of this case the House of Lords called on the fifteen judges to define the law of insanity. In all the cases I have cited, it will be perceived that the connection between the de-

lusion and the offence charged on the prisoner was clear and palpable.

I will now call attention to the controlling test of criminal responsibility recognised in England and throughout the various States of this Union, and adjudged to be the law by the highest courts of this State.

In Freeman v. People, 4 Denio, 29, Beardsley, J. in delivering the opinion of the court says:

"The insanity must be such as to deprive the party charged with crime, of the use of reason with regard to the act done. He may be deranged on other subjects, *but if capable of distinguishing between right and wrong in the particular act done by him, he is justly liable to be punished as a criminal.*"

In the case of Willis v. The People, 32 N. Y. 715, this doctrine was reaffirmed in the Court of Appeals and adjudged to be the law. Willis was tried at the Oyer and Terminer and convicted of murder. His counsel, having taken exceptions to certain portions of the charge of the judge to the jury, carried the case to the Supreme Court (3d District), where the conviction was affirmed. The case was then taken by writ of error to the Court of Appeals. Denio, Ch. J., in delivering the opinion of the Court, says (pages 718, 719):

"I am of opinion that the charge in its general scope was entirely correct, and that there was no error in the particular part which was specially excepted to. * * * * *
He (the Judge) then proceeded to state what did constitute mental alienation, and said if at the time of the act the person was under a delusion and did not know right from wrong, or that the act was an offence or was wrong, he was insane, and was not responsible for the act, but that a person was not insane who knew right from wrong, and that the act he was committing was a violation of law and wrong in itself. * * * * * *
The judge might have said, that if the prisoner, when he killed deceased, was in such a state of mind as to know that the deed was unlawful and morally wrong, he was responsible, and that otherwise he was not. This, perhaps, would have been more precise and discriminating."

This exposition of the law is from the highest courts in this State. While the greatest medical authorities concur on this

subject with our court of last resort; it is of no moment that some physicians who testify on behalf of the defence in murder cases hold a different opinion. It is a matter of no importance that Ray in his work on insanity, relied on by the defence in such cases, denounces this test as absurd, deplores the ignorance of the courts, and reprobates their obstinacy in not adopting his peculiar views. The tests which the law adopts in regard to the kind or degree of insanity, which shall exempt from criminal responsibility, are clear, definite and specific, and easily understood by one of ordinary intelligence.

Yet this learned, distinguished and enthusiastic writer, § 43, says:

"The frequency with which insanity is pleaded in defence of crime, the magnitude of its consequences to the parties concerned, and the perplexity in which the discussions it occasions involve the minds of judges and jurors, are ample reasons why the law relative to insanity should be simple and easily understood—a result that can only be obtained by direct legislative enactments. It is time for the legislature to determine what, amid the mass of conflicting opinions on this subject, shall be the law of the land, and thus no longer permit the lives and liberties of people to be suspended on the *dicta* of men, whose knowledge of insanity was exceedingly imperfect, and which have not even the merit of uniformity and consistency."

This author thinks that lawyers and judges are unable to comprehend or define insanity, that physicians alone can do this. On this subject, § 45, he says:

"It is not enough, that the standing of the medical witness is deservedly high in his profession, unless it is founded on *extraordinary* knowledge and skill relative to the particular disease, insanity. * * * If a particular class of men only are thought capable of managing the treatment of the insane, it would seem to follow as a matter of course, *that such only are capable of giving opinions in judicial proceedings relative to insanity.*"

This author, whose work on insanity is a masterpiece of literature—an ever-gushing fountain of eloquence and learning—whose researches have been unlimited, whose experience has been vast and varied, thinks that none but men like himself should be called on to define insanity. Judges and lawyers, however much their intellects may shine upon other subjects,

grope in darkness and confusion interminable when they make the attempt to discuss or define insanity. None but Dr. Ray and his disciple are competent for this purpose.

Now suppose, in view of the great importance of the subject, acting on the views of this author, "the Legislature should attempt to determine what amid the mass of conflicting opinions on this subject shall be the law of the land," and suppose, in order to have an accurate and precise definition of insanity, so as to establish a definite rule in regard to responsibility for crime, the Judiciary Committee of the Senate should call before them, not the disciples of this distinguished author, who shine from borrowed light, but Dr. Ray himself, what would be his testimony? The answer is found in § 24 of "Ray on Insanity." Upon this very subject he says:

"Jurists who have been so anxious to obtain *some definition of insanity which shall furnish a rule for the determination of responsibility, should understand that such a wish is chimerical from the very nature of things.*"

Here then we behold this great luminary of medical jurisprudence acknowledging with remarkable candor that he can shed no light on this subject, perplexing and bewildering to him, but clear to the courts as the noonday sun. He denounces the courts for the rules defining responsibility, established by numerous adjudications. His work overflows on this subject with wisdom, which encourages us to look to him for light to guide us in our escape from the labyrinth of difficulties in which the whole subject has been involved by the courts; yet, just as we fondly hope we are at the point of deliverance from our confusion, suddenly his wisdom takes

"The other shape,
If shape it may be called that shape has none;
* * * * *
Or substance may be called that shadow seems."

We are informed that upon this subject we must forever grope in darkness; that so far from being able to obtain a knowledge of clear and intelligible principles upon the subject of criminal responsibility, we "should understand that *such a wish is chimerical from the very nature of things.*"

If, still anxious to get some light on the general subject, we turn to other parts of this work, to ascertain the author's views with reference to the kind, or nature, or extent of insanity which will incapacitate one from making a will or any conveyance of property, we find equal accuracy and precision. On this subject, § 7, the author says:

"We cannot but think that the ends of justice would be better attained if *no general rule at all were adopted.*"

By these citations from "Ray on Insanity," it will be perceived how much that author and his school can aid courts and juries in disposing of questions relating to insanity.

Ray and his disciples are learned and brilliant; they illumine with great ability every subject upon which they treat. With courage they battle the views of the best medical writers and the most profound jurists. The far-famed Alexandrian library in flames did not present a more brilliant spectacle than the fire of their genius, consuming the literature of medical jurisprudence, which has been approved by the highest medical authority, and which by a long series of adjudications by our highest courts has been engrafted on the law of the land.

The swift advance of Ray in medical science, the hitherto unfathomable depths he has sounded, his comprehensive views, his great scholarship, his liberal turn of mind, powerful grasp of thought, and his outspoken candor remind us of Caliph Omar and his reason for burning the Alexandrian library. The great Caliph said; "If these Grecian books agree with the Koran, they are useless; if not, they should be destroyed."

If other medical works agree with Ray on Insanity, if other physicians agree with Dr. Ray and his peculiar and especial disciples, they are superfluous—useless; if not, they should be exterminated. We are indeed fortunate in our day and generation, to have just one *Ray* of light to illumine the whole medical and legal world!

To show that I am not at all severe in my criticism of medical writers and physicians, who like Dr. Ray seem to think that all knowledge on the subject of insanity is confined to themselves, and those who think with them, I will invite your

attention to an extract from Elwell's Med. Ev., pages 423, 424. The author adopts the following language of Dr. D. M. Reese:

"Many medical men announce their opinions as to the sanity or insanity of a defendant, as an oracle, and with a confidence proportionate to their ignorance, and when called upon by the ministers of the law for the grounds or reasons upon which their opinion is based, they are wiser than twenty men 'who can give a reason,' while they reply: 'no definition is possible, no test is reliable, but your right and wrong theory is arrant nonsense. We doctors are the judges, and wisdom will die with us.' Verily, we assume that another Daniel has come to judgment. That our brethren of the bench and bar should smile at our ludicrous assumption of infallibility, and *that a common sense jury should ignore such incoherent testimony, and even impute 'moral insanity' to such doctors, is not at all marvellous.*"

For myself, I must say, that if we had to depend for information upon physicians of this description, if we were compelled to follow their judgment, it would be as well to abolish all criminal law. I quite agree with Sir Benjamin Brodie. He says:

"Allow me to add, that it is a great mistake to suppose that this is a question which can be determined only by medical practitioners. Any one of plain common sense, and having a fair knowledge of human nature, who will give it due consideration, is competent to form an opinion on it; and *it belongs fully as much to those* whose office it is to administer the law, as it does to the medical profession."

Some doctors who loom up so conspicuously in murder cases to prove insanity when it exists only in their own imagination, would do well to treasure up the following, from "Taylor's Medical Jurisprudence" (6 Am. Ed., p. 681).

"When the defence of insanity is set up, in a charge of murder, in order to warrant the jury in acquitting a prisoner, it must be proved affirmatively that he was insane, in a certain legal sense, *at the time of perpetrating the act.*" * * * "It is necessary to impress upon the mind of the medical witness, that it is not medical, but *legal* insanity which has to be proved on these occasions to the satisfaction of a jury. As no two medical men agree about what is madness in a medical sense, and as some 'mad doctors' have even held that *all great criminals are necessarily insane*, it is obvious, that the power to absolve from responsibility could not be placed in the hands of the profession with a due regard to the protection of society, or a safe administration of the law."

Many of these enthusiastic medical writers and learned doc-

tors maintain the doctrine, that if one is partially insane he is totally irresponsible for his acts. They reason, that if the mind is partially unsound, that constitutes a condition of insanity. On this subject, in the case of Mosler v. The Commonwealth, 4 Barr. 266, Chief Justice Gibson says:

"*On this point there has been a mistake as melancholy as it is popular. It has been announced by learned doctors, that if a man has the least taint of insanity entering into his mental structure, it discharges him of all responsibility to the law.*" "*To this monstrous error may be traced, both the fecundity of homicides which has dishonored this country, and the immunity that has attended them.*"

The only case in England favoring the views of these distinguished medical enthusiasts who have carried the doctrine of partial insanity to such absurd and monstrous length, is that of Waring v. Waring (6 Moore's P. C. Cases, 349), in which Lord Brougham intimated, that if a person were afflicted with delusion or monomania upon any subject, he has not legal capacity, and is not responsible for his acts. This doctrine is not now and never was law in England, nor has it ever received any sanction in this country. All the decisions here and in England are directly the other way.

In 1 Redfield on Wills, pages 81 and 82, the author speaks of this case as follows:

"A somewhat remarkable opinion was delivered by Lord *Brougham* in an important case before the Privy Council, in which he takes the ground that any person laboring under delusion, or monomania, to any extent or upon any subject, is not to be regarded as competent to execute a valid will. We have no apprehension that any such rule will permanently obtain currency in the English courts. *It has certainly received no countenance in this country*, and we should not be surprised if this opinion were never alluded to in the cases which shall hereafter occur in the English courts."

"In the latest edition of Dr. Taylor's learned work upon medical jurisprudence, the case of Waring v. Waring is referred to, among others, upon the subject of partial insanity, but without comment. We do not perceive any manifestation of any change in the views propounded upon this subject in the English courts, or by medical writers there, which tends toward the result of any new rule having been introduced into English jurisprudence upon this subject, by that case or any other."

It was never held by any court, either in England or this

country, that if a person had a monomania or delusion in respect to one subject, he was exempt from criminal responsibility for all his acts. It never was held that partial insanity, monomania, or delusion, relieved a person from criminal responsibility in respect to acts not connected with such partial insanity, monomania or delusion. As already shown in cases of partial insanity, there can be no exemption from criminal responsibility, unless the act is the direct offspring—the immediate result—of the delusion, and not then unless the facts supposed to exist, would, if actually true, justify the act in question.

I have shown, 1st. If one be partially insane, it does not follow that he is exempt from responsibility for criminal acts.

2d. If one partially insane commit an offence, if the offence —the act with which he is charged—be not the direct offspring of the insanity, he is responsible to the law. If the prisoner's delusion relate to some other subject—is not connected with the act for which he is on trial—it does not shield him from responsibility. In such case partial insanity will furnish no excuse for crime.

3d. In case of partial insanity or delusion, one is not exempt from responsibility for his acts, unless the facts, which he imagines or believes to exist (but which are entirely fictitious), would, if true, justify him in the commission of the deed for which he is on trial.

4th. If one knows right from wrong with reference to the act for which he is on trial, he is responsible for his conduct.

In other words, in these cases in order to establish the defence of insanity, it must appear from the evidence that the prisoner is partially insane, that the act in question was the direct offspring of the delusion or partial insanity, and that with reference to that act, the prisoner did not know right from wrong.

For all practical purposes, I think I have succeeded in pointing out the line of demarcation between sanity and insanity—the boundary line between responsibility and irresponsibility. In order to show the necessity of the passage of the bill I have drafted, I have deemed it important to expatiate at

some length upon the law on the subject of insanity. The fact that insanity is often, of late years, interposed as a defence, where the accused is entirely sane, is no reason why, in cases where insanity really exists, the full benefit of such a defence should not be had. Those proven insane, within the rules of law I have cited, and acquitted on that ground, should be sent to a lunatic asylum, where they could be kindly and tenderly treated, and the community protected from violence at their hands.

I have endeavored to call attention to the extent to which the defence of insanity—a good one in proper cases—has been perverted. I have shown that it has been too often used—not to protect those who were visited with the fearful calamity of insanity—but to set loose upon the community criminals guilty of the highest crime known to the law. I have shown the wild and visionary theories adopted by not a few medical writers and physicians, and to some extent by juries, as would appear by their extraordinary verdicts in some instances, and their failure to agree on a verdict of guilty in other cases. I have shown that the doctrines proclaimed on the subject are so latitudinarian—so elastic—that the theories avowed are so comprehensive as to embrace almost every case of crime. If the theories advanced be sound, it would not be difficult to prove insanity by the ordinary rules of evidence. Where the proof was so easy, the commission of crime being almost sufficient to establish insanity, it would be supposed that enough had been done to relieve criminals of the highest grade from responsibility to the law. But since the decision of the court of appeals in the case of the People v. McCann, 16 N. Y. 58, many of the courts have been in the habit of charging juries that if the defence established a doubt on the subject of the prisoner's sanity, he is entitled to an acquittal. If this were the law, it would be almost impossible to convict in any case where the sanity or insanity of the accused was the subject of evidence. But such is not and never was the law. The law presumes the prisoner sane. It is for the defence to rebut this presumption by proving him insane. Some very loose notions have prevailed in reference to the proof requisite for this purpose. All the au-

thorities agree that in order to derive any benefit from the plea of insanity, the party interposing it must prove it.

The burthen of proof on this subject is with the defence: otherwise it would in all cases be necessary for the prosecution to establish sanity by affirmative evidence in the first instance. The modern idea is that any kind of insanity, no matter how vague and shadowy, is a defence to all kinds of crime, and that this insanity *need not be proved at all*, but that it is quite enough to raise a *doubt* as to its existence, to enable those who perpetrate the most atrocious crimes to escape all criminal responsibility for their acts.

The absurd length to which this doctrine is susceptible of being carried is illustrated in the case of Cole, recently tried for the murder of Hiscock. A more extraordinary perversion of the doctrine of insanity was never made. The following is an extract from a report of the case in 7 Abbott's Practice, Rep. 347.

"The jury again retired. Subsequently they came into court, and the foreman stated they found the prisoner to have been sane at the moment before and the moment after the killing; but they were in doubt as to his sanity on the instant of the homicide."

"The Judge charged the jury that they must give the prisoner the benefit of the doubt if they had rational doubt, founded upon the evidence, and could believe such doubt to be well founded upon such a condition of the case as was presented by this statement of the jury."

The jury rendered a verdict of "Not Guilty."

Something like this was attempted in the case of The Queen *v.* Townley, who was tried in England in 1863, for the murder of Miss Goodwin, between whom and himself there formerly existed an engagement of marriage.

In Taylor's Medical Jurisprudence, page 697, the learned and distinguished author, in speaking of this case, says:

"One medical defender of Townley, in order to account for the absence of symptoms of insanity, suggested that the duration of the homicidal impulse was short, and did not extend beyond the period of the commission of the act to which it impelled. *There would be no difficulty, on these principles, in making out that every act of murder was the result of impulsive insanity, and that all murderers, while stabbing others, are morally insane, and, therefore, although they may show sanity afterwards, they are irresponsible for their acts.* The legal test of a consciousness of right and wrong is much complained of; but in

practice it certainly cannot be said to err on the side of harshness or severity for it is much more common to find that sane persons are acquitted on the ground of insanity than that one who is really insane is convicted and punished as a sane criminal. But the medical assumption here suggested to extenuate Townley's crime would go far to exculpate every criminal who committed murder."

"The doctrine of irresistible impulses and the theory of impulsive insanity, have been strained in recent times to such a degree as to create in the public mind a justifiable distrust of medical evidence on these occasions. It is obviously easy to convert this into a plea for the extenuation of all kinds of crimes for which motives are not at once apparent, and thus medical witnesses often expose themselves to severe rebuke. They are certainly not justified in setting up such a defense, unless they are prepared to draw a clear and common-sense distinction between impulses which are "unresisted" and those which are irresistible. As a learned judge once remarked in his address to a jury: 'What is the meaning of not being able to resist an impulse? *Every crime is committed under an impulse, and the object of the law is to compel persons to control or restrict their impulses.*' If it is made an excuse for a person who has committed a crime that he was goaded to it by some impulse which medical men might choose to say *he* could *not* control, such a doctrine would be fraught with very great danger to society."

A great deal of confusion has been created with respect to the degree of proof necessary to establish the defence of insanity in criminal cases, by reason of the language used by Judge Brown in the case of McCann. I think that case has been greatly misunderstood, and that a construction has been put upon it never intended by the Court of Appeals. I propose to show precisely what was decided in that case.

In the case of The People *v.* McCann, 16 N. Y., 58, the Judge, on the trial at Oyer and Terminer, charged the jury that, "as sanity is the normal state, there is no presumption of insanity, *and the defence must be proved beyond a reasonable doubt.*" It was held that this portion of the charge was erroneous, and a new trial was therefore granted. Two opinions were delivered, one by Judge Bowen and another by Judge Brown.

Judge Bowen rests his opinion on the ground that the defense of insanity in criminal cases must be proved the same as in civil cases; that is, that the *preponderance* of evidence must be in its favor. The party having the affirmative in all civil cases, must prove it by a preponderance of evidence. If the evidence be equally balanced, there being no preponderance on

the one side or the other, the decision should be against the party having the affirmative.

That Judge Bowen based his decision in the McCann case upon the ground that, although it was not necessary for the defendant to prove insanity in a criminal case "beyond a reasonable doubt," yet, it was necessary for him to establish it by a preponderance of evidence, as in civil cases, is clear, as will appear by the following extract from his opinion, page 62.

"It is a general rule, applicable to all criminal trials, that to warrant a conviction the evidence should satisfy the jury of the defendant's guilt beyond a reasonable doubt; and it has been held that there is a distinction in this respect between civil and criminal cases. The rule is based upon the presumption of innocence, which always exists in favor of every individual charged with the commission of a crime. It is also a rule, well established by authority, that where in a criminal case insanity is set up as a defence, the burden of proving the defence is with the defendant, as the law presumes every man to be sane. But I apprehend that the *same evidence will establish the defence which would prove insanity in a civil case.* The rule requiring the evidence to satisfy the jury beyond a reasonable doubt is one in favor of the individual on trial charged with crime, and is applicable only to the *general conclusion*, from the *whole* evidence, of guilty or not guilty."

Although Judge Brown arrives at the same conclusion as Judge Bowen, that the charge of the court below was erroneous, he expresses an opinion entirely different from Judge Bowen, in respect to the proof necessary to establish insanity in criminal cases. At page 65 Judge Brown says: "It certainly is true that sanity is the normal condition of the human mind, and in dealing with acts, criminal or otherwise, there can be no presumption of insanity." At page 68 Judge Brown says:

"The law presumes malice from the mere act of killing, because the natural and probable consequences of any deliberate act are presumed to have been intended by the author. But if the proof leaves it in doubt whether the act was intentional or accidental, if the scales are so evenly balanced that the jury cannot safely determine the question, shall not the prisoner have the benefit of the doubt? And if he is entitled to the benefit of the doubt in regard to the malicious intent, shall he not be entitled to the same benefit upon the question of his sanity, his understanding? For, if he was without reason and understanding at the time, the act was not his, and he is no more responsible for it than he would be for the act of another man."

Judge Brown means to say that if the scales are evenly poised as to sanity or insanity, then a reasonable doubt is created

and the jury should find in favor of insanity. All that the court of appeals did or could decide was, that the judge at the trial was wrong in charging that insanity must be proved *beyond a reasonable doubt.* According to this charge it would not be sufficient to prove insanity by a preponderance of evidence. Had the judge below charged the jury that in order to establish the defence of insanity, the evidence must *preponderate in its favor*, he would have charged the law as it always existed.

If the language of Judge Brown were correct, it would be necessary in all cases of murder for the prosecution to prove that *beyond a reasonable doubt*, the prisoner was sane at the time of the homicide. Judge Brown, in his opinion, page 68, lays stress upon the definition of murder as given by Sir Edward Coke. (3 Inst. 47.)

"When a person of '*sound memory*' and discrimination unlawfully killeth any reasonable creature in being, and under the king's peace, with malice aforethought, express or implied."

Judge Brown proceeds to argue in his opinion, that it is necessary for the prosecution to prove all "the constituents of the crime," and among them, that the prisoner was "of sound memory and discrimination."

That such is not the law has been distinctly and emphatically held by the Court of Appeals in the subsequent cases: In Walter v. The People, 32 N. Y. 141. Wright, J., in delivering the opinion of the court, page 164, says:

'The prisoner's counsel requested the judge to charge as a proposition of law, that in a case where the defence consists in the insanity of the prisoner, it becomes incumbent upon the prosecution to prove him sane. * * * * * * *

"As an abstract legal proposition it was manifestly unsound. Sanity is presumed to be the normal state of the human mind, and it is never incumbent upon the prosecution to give affirmative evidence that such state exists in a particular case."

In the case of Ferris vs. The People, 35 N. Y. 125, Davies, Ch. J., in delivering the opinion of the court at page 129, quotes with approbation the extract above cited from Judge Wright's opinion.

The whole difficulty in the McCann case arose from the fact, that the judge at Oyer and Terminer failed to lay down

correctly the rule of evidence. He should have charged the jury upon the subject of insanity as follows:

1st. That the law presumes sanity and not insanity. 2d. That the party who interposes insanity as a defence must prove it. 3d. That the party setting up this defence has the affirmative, and must prove it by a *preponderance* of evidence. The doctrine as to a *reasonable doubt* had nothing to do with proving insanity. Judge Bowen, in McCann's case, 16 N. Y. 62, correctly said:

"The rule requiring the evidence to satisfy the jury beyond a reasonable doubt is one in favor of the individual on trial charged with crime, and is applicable only to the *general conclusion*, from the whole evidence, of guilty or not guilty."

The distinction between the proof necessary, in civil and criminal cases, is well stated in 3 Greenleaf's Ev. § 29:

"A distinction is to be noted between civil and criminal cases, in respect to the degree or *quantity of evidence* necessary to justify the jury in finding their verdict for the government. In civil cases, their duty is to weigh the evidence carefully, and to find for the party in whose favor the evidence *preponderates*, although it be not free from reasonable doubt. But in *criminal* trials the party accused is entitled to the benefit of the legal presumption in favor of innocence, which in doubtful cases is always sufficient to turn the scale in his favor. It is therefore a rule of criminal law, that *the guilt of the accused must be fully proved*. Neither a mere preponderance of evidence, nor any weight of preponderant evidence is sufficient for the purpose, unless it generate full belief of the fact, to be the exclusion of all reasonable doubt." * * * * * * * * * * * "For it is not enough that the evidence goes to show his guilt; it must be inconsistent with the reasonable supposition of his innocence."

This is the doctrine laid down by Judge Bowen in the McCann case. As this has always been the law, and as no judge as a member of a court sitting *in banc* in any reported case ever expressed any contrary doctrine, it is to be presumed that the Court of Appeals in the McCann case did not overrule the elementary principle above cited from Greenleaf. All that Judge Brown said to the effect that if any reasonable doubt exists as to whether insanity is proved in a criminal case, the jury should give the doubt in favor of the prisoner was *obiter*. No such point was before the court.

The views I have expressed in regard to what was decided in the case of The People vs. McCann, are fully sustained by a

recent decision of the Court of Appeals. In the case of The People v. Schryver, 42 N. Y., 1, it was held that in a case of homicide it was sufficient for the prosecution to prove that the deceased was killed by the prisoner. The court distinctly held, that where the prosecution had proved this, the *corpus delicti* was established;—a case was made out against the prisoner, who, if he had any defense, for example, justification,—self-defense,—he must prove it by affirmative testimony. The court below in this case fell into the same error in charging the jury as in People vs. McCann, that the prisoner must prove his affirmative defense "beyond a reasonable doubt." The Court of Appeals held that this was error. They placed their decision upon the distinct ground, that in a criminal case a defendant must prove any affirmative defense, such as self-defense or insanity, by a *preponderance* of testimony. Earle, Ch. J., in delivering the opinion of the Court, (p. 8), refers to the case of McCann as follows:

"In the case of The People vs. McCann, (16 N. Y., 58), the presiding justice at the trial charged the jury that the prisoner was bound to prove his defense of insanity 'beyond a reasonable doubt.' Whether this charge was correct or not was the only question for the consideration of the Court of Appeals, and it was held to be incorrect, and the judgment was reversed. Two opinions were written; Judge Bowen held that it was enough for the prisoner to establish this defense, as insanity would be proved in a civil case, by a preponderance of evidence. Judge Brown held, that while the law presumed every man to be sane, when the prisoner introduced evidence to show his insanity, the burden devolved upon the people to prove his sanity, like any other material fact in the case, beyond a reasonable doubt. *It does not appear that the Court concurred in this view.* It was sufficient for the Court to hold that the charge was too unfavorable to the prisoner. Before Judge Brown's opinion shall be taken as the settled law, the question will need further consideration, as it does not seem to be supported by the current of authorities."

Thus it will be perceived that whenever insanity is interposed, it must be proven; that it is not sufficient to get up a doubt upon the subject, but it must be established by a preponderance of evidence; otherwise the testimony goes for nothing.

The law on the general subject may be summed up as follows:

If upon the trial of a criminal case the insanity proved be total, the prisoner is not responsible for his acts.

If the defence rely upon partial insanity, it must be shown by the evidence:

1st. That if the defendant labored under a delusion, the act in question was the direct result—the immediate offspring of that delusion or partial insanity.

2d. That the facts and circumstances which the defendant believed to exist (but which were untrue) would, if true, in law, have justified the defendant in the commission of the act for which he is on trial.

3d. That with reference to such act the defendant did not know right from wrong.

4th. Insanity, like any affirmative defence, must be proved by a preponderance of evidence.

I have shown some of the alarming consequences which flow from the modern doctrine of insanity, as expounded by certain physicians and medical writers. If these doctrines are to be carried into practical operation by courts and juries, society cannot hold together. The community can have no protection from violence and bloodshed. But, whether these extraordinary doctrines be well or ill founded, the necessity of confining in a lunatic asylum persons tried for murder, who, by an acquittal on the ground of insanity, escape the gallows and the State prison, is none the less imperative. If they are so insane that from any exciting cause they are liable at any moment to kill those with whom they are brought in contact, no sophistry nor sickly sentimentality nor maudlin philanthropy can make it appear that it is safe or just to the community, or right that they should be at liberty. The interests of society and a proper regard for insane criminals demand their confinement in a lunatic asylum.

That the public interest, the safety and protection of the community require the passage of the proposed law is clear and unquestionable. Under the present law, as a general rule, persons acquitted on the ground of insanity are immediately let loose upon the community. No proposition is clearer than that every community has the inherent right of self-protection. Such protection can only be secured by the enactment of a law like the one proposed.

The following is the bill referred to :

AN ACT

IN RELATION TO THE DEFENSE OF INSANITY IN CRIMINAL CASES.

The People of the State of New York represented in Senate and Assembly, do enact as follows :

SECTION 1. Whenever the jury on the trial of any indictment for felony shall acquit the defendant on the ground of insanity, they shall so state in their verdict.

§ 2. Whenever, upon the trial of any indictment for any capital offense, the jury shall acquit the defendant on the ground of insanity, such insanity shall be presumed to continue, and the court in which such acquittal shall be had, shall make an order that the person so acquitted shall be confined in one of the State lunatic asylums, or in the State lunatic asylum for insane criminals at Auburn, for a period of not less than fifteen ~~nor more than thirty~~ years, and until it shall be proved in the manner provided by law that the defendant has been restored to sanity. The said defendant shall be confined in such lunatic asylum accordingly, and shall not be discharged or set at liberty before the expiration of the period mentioned in said order, except as hereinafter provided.

§ 3. The governor shall have power, at any time, if in his opinion justice shall require it, to discharge any person confined under the provisions of this act. But before making any such discharge, or entertaining an application for that purpose, the governor shall require that not less than twenty days' notice in writing of an intention to make such application shall be served on the District Attorney of the county in which the trial resulting in acquittal on the ground of insanity shall have been had.

§ 4. This act shall take effect immediately.